

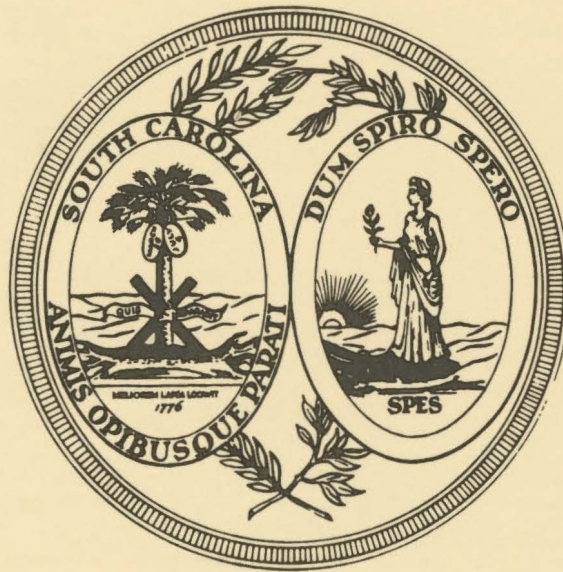
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## South Carolina General Assembly



### Legislative Audit Council



The State of South Carolina  
General Assembly  
Legislative Audit Council  
Sunset Review of the  
Board of Chiropractic Examiners  
July 23, 1980

THE STATE OF SOUTH CAROLINA

GENERAL ASSEMBLY

LEGISLATIVE AUDIT COUNCIL

SUNSET REVIEW OF

BOARD OF CHIROPRACTIC EXAMINERS

## TABLE OF CONTENTS

	<u>Page</u>
REPORT SUMMARY	1
BOARD REVIEW	4
SUNSET ISSUES AND EVALUATION	14
APPENDIX 1 - Appointment of Board Members	19

## REPORT SUMMARY

Act 608 of 1978 mandates the establishment of "... A system for the Review, Termination, Continuation or Reestablishment of State Agencies, Boards, Departments and Commissions." This is commonly referred to as the "sunset" act. Under this section of the law the General Assembly has set up a process for the "systematic review" of certain governmental entities so that it might be in a "better position to evaluate the need for their continuation, reorganization or termination." Section 6 of the Act lists 40 agencies, boards and commissions which are to be re-viewed and sets termination dates for these entities. The Board of Chiropractic Examiners is scheduled to terminate on June 30, 1981.

On May 10, 1978 the statute creating the Board was declared unconstitutional by the South Carolina Supreme Court because it restricted the Governor's power to appoint. In January 1980, legislation was enacted which reconstituted the Board. Nominees to the Board have been selected, and on June 13, 1980 Board members were appointed by the Governor (see Appendix I).

Chiropractors are health care specialists and experts in manipulating the human spinal column. State regulation provides the public a means to identify those individuals which are qualified to practice chiropractic.

Although the new Board has yet to be selected or begin its routine tasks such as licensure and examination, the Council has made several recommendations based upon past examination of other regulatory boards.

They are:

- In order for the Board to accomplish its administrative duties, there will be a need for some administrative staff. In order to perform this function in the most efficient and economical method possible, the Board should explore the possibility of a centrally located administrative office and staff shared with other medically oriented Boards (see p. 5).
- The Board should consider using a national examination and testing service rather than developing its own exam (see p. 7).
- The Board should develop a system of receiving and recording complaints and develop formal policies for handling complaints (see p. 9).
- The Board should acquire the capability to investigate complaints. In order to perform this task in the most economic fashion, the Board should coordinate this capability with other medically oriented boards (see p. 11).
- Section 40-9-97 of the 1976 Code of Laws governing chiropractors may restrict the free flow of information between the Board and other enforcement authorities concerning complaints and disciplinary information. This section may need to be amended to permit information to be exchanged between selected medical and enforcement bodies (see p. 11).

In performing this audit the Council examined existing Board files, records and memos. Interviews were held with officials and State agencies. Statutes were examined in detail. The following report is divided into two sections; Board Review and Sunset Issues and Evaluation.

## BOARD REVIEW

### Background

The South Carolina Board of Chiropractic Examiners was initially created by Act 892 of 1932 and charged with the responsibility of examining and licensing chiropractors in the State. On May 10, 1978, the South Carolina Supreme Court declared the statute creating the Board (South Carolina Code 40-9-30, 1976) unconstitutional. The Court stated that "The Governor's authority to appoint the members of the Board is restricted by (law) to those persons who are members of the South Carolina Chiropractor's Association, a private organization." The Court also said that the "... Association possesses the unbridled authority to determine who is eligible for appointment to the Board" and that this authority "... is tantamount to an express grant of the appointive power which, when placed in the hands of a private organization, violates Article III Section I (of the South Carolina Constitution.)"

Since 1978 the Board has been prohibited from conducting business and the practice of chiropractic has not been regulated in the State. In January 1980 an act to amend the statutes concerning chiropractic practice, the Board and the regulation of chiropractic schools was passed. Section 40-9-30 was amended to increase the size of the Board to eight members, two of whom are to be non-related to the medical profession and selected by the governor. Also, the Act amended the statutes regarding selection of Board members. As the law now states:

One licensed chiropractor shall be appointed by the Governor from each congressional district. Such appointment shall be made from two nominees who shall have received a majority of the vote in a ballot taken by the licensed and practicing chiropractors in each district.

If the Governor declines to appoint either of such nominees so submitted, additional nominees shall be submitted in the same manner.

The conduct of the first election is the responsibility of the South Carolina Election Commission and all subsequent elections are to be conducted by the Board. Terms of office are for four years and all chiropractic members are required to have five years of experience in South Carolina.

On April 29, 1980 the South Carolina Election Commission collected and counted ballots distributed to all previously licensed chiropractors in the State. The results of the balloting were certified and sent to the Governor on April 30, 1980. On June 13, 1980 Board members were appointed by the Governor (see Appendix I).

#### Budget and Staff

During the last fiscal year of its operation (1977-1978) the Board expended \$8,608 and received fees totalling \$22,488 (see Table 1). Major expenditures included personal services, per diem and travel. Staffing consisted of one part-time clerk whose duties included file and record keeping in addition to collection of fees and aiding in administering the exam.

When the Board is reformed and routine tasks such as licensing, examining and other functions are begun, there will be a need for a small administrative/clerical staff. In order to perform its functions in the most efficient and effective method possible, it may be to the Board's advantage to examine the possibility of sharing a full-time administrative staff along with other medically-oriented boards. Two or more small boards could reap all of the rewards of a full-time, Columbia-based administrative office at a relatively low cost.



TABLE 1

SOUTH CAROLINA BOARD OF CHIROPRACTIC EXAMINERS

Statement of Revenue, Expenditures and Appropriations  
Four Year Period Ending June 30, 1978

	<u>1974-75</u>	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>
<u>Revenue Generated</u>				
License Renewal Fees	\$ 1,172	\$ 1,428	\$ 9,350	\$12,317
Late Fees & Penalties	200	225	-	100
Assessment Fees	95	150	-	-
Application Fees	-	-	1,075	600
Reinstatement Fees	-	300	-	-
Examination Fees	920	580	1,725	675
Reciprocity Fees	-	280	-	-
Contributions	2,487	4,750	39	188
Miscellaneous Fees	532	-	-	-
Balance from				
Previous Year	1,896	1,536	*	*
Lapsed	1,536	2,330	-	-
Total Receipts	<u>\$ 5,766</u>	<u>\$ 6,919</u>	<u>\$12,189</u>	<u>\$13,880</u>
 <u>Expenditures</u>				
Personal Services	\$ 1,356	\$ 1,425	\$ 1,650	\$ 1,800
Board Per Diem	1,200	1,430	1,250	1,190
Travel	2,176	1,986	2,118	1,643
Telegraph & Telephone	395	761	1,192	1,737
Repairs	-	42	45	38
Printing	130	-	-	224
Professional Services	155	-	-	-
Other Contractual				
Services	-	-	269	863
Office Supplies	158	1,031	169	373
Postage	179	244	74	296
Other Supplies	17	-	111	95
Rents	-	-	-	50
Insurance	-	-	-	98
Office Equipment	-	-	-	72
Employer Contributions	-	-	-	129
Total	<u>\$ 5,766</u>	<u>\$ 6,919</u>	<u>\$ 6,878</u>	<u>\$ 8,608</u>
 <u>State Appropriations</u>	<u>-</u>	<u>-</u>	<u>\$ 7,014</u>	<u>\$ 9,722</u>

\* In 1976 the Board came under the Comptroller General and these balances went into the General Fund.

## RECOMMENDATION

THE BOARD SHOULD EXPLORE THE POSSIBILITY OF ADMINISTRATIVELY COMBINING WITH OTHER MEDICALLY-ORIENTED REGULATORY BOARDS.

### Licensure and Examination

#### Licensure

Section 40-9-40 of the South Carolina Code of Law as amended in 1980 lists the qualification for licensure as a chiropractor. These are as follows:

- (1) Two years of pre-professional college credits from an accredited institution.
- (2) Graduation from an accredited chiropractic college.

Upon fulfilling these requirements the candidate may stand for examination. These qualifications do not apply to students enrolled in a chiropractic college prior to July 1, 1974. Also, this section of the law states that any person who is a graduate of an accredited chiropractic college (accredited or candidate for accreditation at the time of graduation), and has been a legal resident of South Carolina from 1975 to 1978, may practice chiropractic until a board is constituted and an exam is given.

#### Examination

Prior to 1978 the examination given to applicants for chiropractic licenses in South Carolina consisted of nine parts: pathology, hygiene, chiropractic philosophy, anatomy, physiology, diagnosis, chemistry, toxicology and x-ray. Applicants were also required to demonstrate their practical ability. It was the practice of the Board to have each of its four members make up, administer and grade several sections of the exam.

This method of examination is inefficient, time-consuming and can result in inconsistencies and confusion. Differences in philosophy, education and experience among the Board members can influence the contents of the exam.

The National Board of Chiropractic Examiners administers an examination for its Diplomate Certificate. The exam consists of thirteen sections: pathology, hygiene, principles of chiropractic, anatomy, physiology, diagnosis, chemistry, x-ray, bacteriology, gynecology, geriatrics, physiotherapy, jurisprudence and ethics. Eight of these sections correspond closely to those used in the South Carolina exam. The National Board examination is standardized and objective in nature. In addition, it is more likely to be current with new developments in the field.

#### RECOMMENDATION

THE BOARD SHOULD CONSIDER USING A  
NATIONAL EXAMINATION RATHER THAN  
DEVELOPING ITS OWN STATE EXAM.

#### Fees

Section 40-9-80 states that the Board may charge license fees and that the renewal fee for out-of-state practitioners or inactive licensees should be lower than active South Carolina licensees. The law also permits the Board to waive fee requirements for those on active duty in the armed forces. Fees are due by July first of each year and, if not paid after sixty days, the license is automatically forfeited. The license may be reinstated upon payment of all sums due plus a penalty

not to exceed twenty-five percent of the license fee. A new fee schedule has not been devised, and Table 2 lists the 1978 fees.

TABLE 2  
1978 SCHEDULE OF FEES FOR  
BOARD OF CHIROPRACTIC EXAMINERS

Examination Fee	\$ 25.00
Application Fee	\$ 25.00
Reciprocity Application Fee	\$ 25.00
Reciprocity License Fee	\$100.00
Renewal Fee	\$ 30.00
Late Renewal Penalty Fee	\$125.00

#### Reciprocity

Section 40-9-70 states that the Board may grant reciprocal licenses to applicants from states which (1) have similar requirements to South Carolina's and (2) grant reciprocal privileges to South Carolina licensees. Also, the applicant must have at least one year of experience in his state of origin.

#### Complaints and Disciplinary Action

Section 40-9-90 of the amended law specifies several acts which are defined as misconduct and may serve as grounds for license revocation, suspension or other disciplinary action, as follows:

1. Use of false statements or fraudulent acts in connection with obtaining a license.
2. Alcohol or drug addiction.
3. Conviction of the unauthorized or illegal practice of chiropractic.
4. Knowingly assist an unlicensed person in practicing chiropractic.
5. Having a mental or physical disability which renders further practice dangerous to the public.
6. Violation of the code of ethics adopted by the Board.
7. Dishonorable or unethical conduct likely to deceive or harm the public.
8. Use of a false or fraudulent statement in a document connected with the practice of chiropractic.
9. Obtaining fees under false circumstances.
10. Intentional violation or aiding in the violation of the laws concerning chiropractic practice.
11. Commission of fraud, illegality, incompetence or gross negligence while practicing chiropractic.
12. Adjudgement of mental incompetence.

The new law also provides that the Board may investigate, hold hearings and has the power to subpoena witnesses or records if needed. The Board may also issue cease and desist orders and may ask the courts for temporary restraining injunctions. Section 40-9-110 provides that any person in violation of the laws concerning chiropractic practice may be fined up to five hundred dollars and/or imprisoned up to thirty days.

Because the Board is empowered to enforce the disciplinary process and is entrusted with protecting the public's health, safety and welfare, its responsibility is to carry out this function in the most efficient and effective manner possible. When complaints are received, they should be recorded in a log book, a special complaint form should be used and complaints should be maintained in their own separate file. It is also important that the Board keep the complainant informed of its actions. Complaints should be investigated within a reasonable time period. Due to the size of the Board it will be difficult to acquire investigative personnel. It is possible that the Board may be able to coordinate the development of its investigative capability with other medically-oriented boards. This type of cooperation could take several forms including (a) several smaller boards acquiring the service of one full-time investigator, or (b) all the medical boards pooling their resources to form a division of medical investigation which they all could use. This type of approach would not only be economical but would result in a greater degree of coordination than exists presently.

One portion of the new law which may hinder such coordination is 40-9-97 which states that:

Every communication, whether oral or written made by or on behalf of any person or firm to the Board or any person designated by it to investigate or otherwise hear matters relating to the revocation, suspension or other restriction on a license or other discipline of a licensee, whether by way of complaint or testimony, shall be privileged.

This statute is similar to 40-47-212 which applies to the Board of Medical Examiners and, as it is currently interpreted, prevents the release of any disciplinary information to other enforcement bodies until final action is taken. As in the Medical Examiners statute, it appears

that 40-9-97 is intended to protect the confidentiality of witnesses and complainants. However, it may restrict the free flow of information to and from other enforcement bodies such as DHEC drug inspectors, the Board of Medical Examiners, law enforcement officials and others. The overall effect of this provision may be that it impedes the process of disciplining the incompetent, unethical or unlicensed practitioner.

#### RECOMMENDATIONS

THE BOARD SHOULD DEVELOP A SYSTEM OF RECEIVING AND RECORDING COMPLAINTS AGAINST PRACTITIONERS OF CHIROPRACTIC AND DEVELOP FORMAL POLICIES GOVERNING ITS COMPLAINTS PROCESS.

THE BOARD SHOULD DEVELOP THE CAPABILITY TO INVESTIGATE COMPLAINTS. IN ORDER TO PERFORM THIS FUNCTION IN THE MOST ECONOMICAL FASHION, THE BOARD SHOULD COORDINATE ITS EFFORTS IN THIS AREA WITH THOSE OF OTHER MEDICALLY-ORIENTED BOARDS.

SECTION 40-9-97 SHOULD BE AMENDED TO PERMIT THE FREE FLOW OF INFORMATION BETWEEN THE BOARD OF CHIROPRACTIC EXAMINERS AND THE FOLLOWING AGENCIES:

BOARD OF MEDICAL EXAMINERS  
BOARD OF NURSING  
BOARD OF DENTISTRY  
BOARD OF PHARMACEUTICAL EXAMINERS  
BOARD OF VETERINARY EXAMINERS  
STATE LAW ENFORCEMENT DIVISION  
DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
CONTROL

Public Participation

During the recent past there has been much public interest and public participation, both directly and indirectly, due to the legislative process of reconstituting the Board. As a result of this process the Board has two public members not connected with the medical profession. Also the Board is required to meet at least semi-annually.



## SUNSET ISSUES AND FINDINGS

Act 608 of 1978 contains eight questions which must be addressed in the review of each agency. These questions encompass the areas of efficiency and effectiveness which will help determine the termination, continuation, or reestablishment of the agency and also provide to the General Assembly an indication of the agency's public responsiveness and regulatory compliance. A summary of these issues and Audit Council's responses are presented in the following section.

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The programs and functions of the Board do not directly affect the cost of chiropractic services in South Carolina. The primary function of the Board is the testing and licensing of chiropractors. The fees charged by the Board will most likely be passed on to consumers. However, the Audit Council found no measurable cost increases or reductions as a direct result of the existence or actions of the Board. It is unlikely that the fees charged would have a significant effect on the cost of services.

- (2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW?

The main functions of the Board are the testing and licensing of chiropractors. These functions have not taken place since 1978. In the absence of licensing, the public has had no governmental assurance that those who hold themselves out as chiropractors possess the necessary level of competence. Also, there has been no specific authority to handle complaints concerning the practice of chiropractic or discipline of chiropractors. It is possible that this has resulted in a threat to the public health, safety and welfare.

- (3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The Board of Chiropractic Examiners expended \$5,766 in FY 74-75, \$6,919 in FY 75-76, \$6,878 in FY 76-77 and \$8,608 in FY 77-78 (see p. 6).

- (4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

Because the Board has not operated since 1978, it is impossible to determine its efficiency. However, the Audit Council has made several recommendations in this report concerning maximizing the efficiency of the new Board. These recommendations include administrative combination with one or more other medically-oriented boards (see p. 5).

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

The Board is required to have two public members. There has been no Board activity since 1978 (see p. 13).

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL OR OTHER AGENCY OR ENTITY.

The Board does not duplicate the services, functions and programs of any other State, Federal or local government entity. Although there are other State Boards which deal with other health care professions, the Board is the only entity responsible for the licensing and examination of chiropractors.

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

Because the Board has not operated since 1978, it is impossible to determine its efficiency in this area. However, the Audit Council recommends that the Board acquire the ability to investigate complaints in cooperation with other medical boards, develop detailed complaint policies and procedures and allow the free transfer of information concerning complaints to other enforcement officials.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

The reconstituted Board has not existed long enough to determine statutory compliance.

## APPENDIX

APPENDIX I

STATE OF SOUTH CAROLINA  
Executive Office  
Columbia

June 13, 1980

The Honorable John T. Campbell  
Secretary of State  
Columbia, South Carolina

1976 Code Sec. 40-9-30 as amended by  
1980 Act No. 307 and Act No. 351

Dear Mr. Campbell:

His Excellency, Richard W. Riley, Governor of South Carolina, this  
day has appointed

Members, S. C. Board of Chiropractic Examiners, with terms to commence  
June 13, 1980 and to expire June 12, 1984:

2nd Cong. Dist.

Dr. Richard C. Monneyham, 1655 Broad River Rd., Columbia, S. C. 29210  
(initial appointment)

4th Cong. Dist.

Dr. Ralph D. Polson, 8 Middleton Place, Greer, S. C. 29651  
(initial appointment)

6th Cong. Dist.

Dr. Leon Sigler, P. O. Box 711, Kingstree, S. C. 29556  
(initial appointment)

At-Large Member

Mr. Robert M. Bell, P. O. Box 497, Langley, S. C. 29834  
(initial appointment)

Senate Confirmation: ~~Required~~  
Not Required

Respectfully,

Original to Secretary of State's Office  
cc: Ms. Nancy Foster, State Election Comm.  
P. O. Box 5987  
Columbia, S. C. 29250

Dwight F. Drake/sss  
Dwight F. Drake  
Executive Assistant

STATE OF SOUTH CAROLINA  
Executive Office  
Columbia

June 13, 1980

The Honorable John T. Campbell  
Secretary of State  
Columbia, South Carolina

1976 Code Sec. 40-9-30 as amended by  
1980 Act No. 307 and Act No. 351

Dear Mr. Campbell:

His Excellency, Richard W. Riley, Governor of South Carolina, this  
day has appointed

Members, S. C. Board of Chiropractic Examiners, with terms to expire  
as follows:

With terms to commence June 13, 1980 and to expire June 12, 1982:

1st Cong. Dist.

Dr. Edward L. Sessions, 3835 Rivers Ave., Charleston, S. C. 29405  
(initial appointment)

3rd Cong. Dist.

Dr. William T. Chandler, 322 Shirley Ave., Honea Path, S. C. 29654  
(initial appointment)

5th Cong. Dist.

Dr. Paul M. Becker, Route 2, Box 838, Laurens, S. C. 29360  
(initial appointment)

At-Large Member

Ms. Schylver V. Foster, 506 Dunbar, Greenville, S. C. 29601  
(initial appointment)

Continued on page 2

Senate Confirmation: ~~Required~~  
Not Required

Respectfully,

*Dwight F. Drake/sss*

Original to Secretary of State's Office

cc: Ms. Nancy Foster, State Election Comm.  
P. O. Box 5987  
Columbia, S. C. 29250

Dwight F. Drake  
Executive Assistant